

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARCO TULLIO TUY GUIT, et al., :

Plaintiffs, :

16 Civ. 7466 (HBP)

-against- :

OPINION  
AND ORDER

38 WATER & STREET INC., d/b/a :  
"Obao," et al., :

Defendants. :

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PITMAN, United States Magistrate Judge:

By an Opinion and Order dated August 7, 2019, I reviewed the proposed settlement in this action brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.; I found that, although the proposed settlement was generally fair and reasonable, I could not approve it because it did not explain how the settlement proceeds -- which total \$47,500.00 -- would be allocated between the two plaintiffs. My Order directed the parties make a supplemental submission clarifying this issue.

Plaintiffs' counsel has now made a supplemental submission explaining that the settlement proceeds will be allocated as follows:

	Allocable Share	Percent of Gross Settlement	Percent of Net Settlement <sup>1</sup>	<u>Pro Rata</u> Share of Damages
Plaintiff Guit:	\$14,956.06	31.5%	47.7%	57.8%
Plaintiff Lopez:	\$16,400.58	34.5%	52.3%	42.2
Attorneys' Fees and Costs	\$16,143.36	34.0%		
<b>TOTAL</b>	<b>\$47,500.00</b>			

Unfortunately, I am still not able to approve the settlement because it does not allocate the settlement proceeds in a reasonable manner. Although plaintiff Guit's claim for unpaid overtime premium pay represents 57.8% of the plaintiffs' total claim for unpaid overtime pay, he is receiving only 47.7% of the net settlement amount while plaintiff Lopez, whose unpaid overtime claim represents 42.2% of the total claim for unpaid overtime pay, is receiving 52.3% of the net settlement amount. In other words, Guit is receiving 10% less than his pro rata share, and Lopez is receiving 10% more than his pro rata share. Although there may be circumstances that justify this disproportionate allocation, plaintiffs offer none.

Because the proposed settlement allocates the settlement proceeds in a disproportionate manner, I cannot approve it on the record before me. No later than August 30, 2019, plaintiffs' counsel is either to submit a revised settlement agreement

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<sup>1</sup>The net settlement is the amount of settlement proceeds remaining after the deduction of attorney's fees and costs.

that allocates the settlement proceeds in a reasonable manner or  
provide an explanation that justifies the present allocation.

Dated: New York, New York  
August 19, 2019

SO ORDERED

  
HENRY PITMAN  
United States Magistrate Judge

Copies transmitted to:

All Counsel